

**CITY OF SAN ANTONIO and  
GREATER KELLY DEVELOPMENT AUTHORITY**

*Department of Community Initiatives  
Community Action Division*



**REQUEST FOR PROPOSAL  
("RFP")**

**DCI 06-04**

**for  
KELLYUSA PROPERTY MANAGEMENT SERVICES  
(IN SUPPORT OF A 12 APARTMENT COMPLEX LOCATED IN BILLY MITCHELL  
VILLAGE, KELLYUSA FOR USE AS TRANSITIONAL HOUSING FOR HOMELESS  
FAMILIES WITH CHILDREN)**

The Request for Proposals will be available Monday, December 22, 2003 and may be obtained from:

Department of Community Initiatives  
Community Action Division  
115 Plaza de Armas, Ste 150  
San Antonio, TX 78205

Or downloaded at [www.sanantonio.gov/rfp/](http://www.sanantonio.gov/rfp/)

**Proposals must be delivered to the City of San Antonio, City Clerk's Office, second floor, City Hall, 100 Military Plaza, no later than 3:00 P.M., Wednesday, January 21, 2004. Proposals will not be accepted after this time.**

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## I. BACKGROUND

With changing missions and budget cuts, the Base Realignment and Closure (BRAC) Commission was tasked by Congress with prioritizing closures of surplus military installations around the world. On June 22, 1995, the closure of Kelly Air Force Base was ordered. In January 1996, the Greater Kelly Development Authority (GKDA) was established by the City Council of the City of San Antonio (City) to represent the City's interest in the base closure process. The Mission of GKDA was to create 21,000 civilian jobs, making the transition a positive long-term change for the City. As an independent, not-for-profit organization, GKDA was also charged with carrying out the task of negotiating the transition of surplus property and equipment to civilian use.

The U.S. Department of Housing and Urban Development (HUD) regulations covering the Base Closure Community Redevelopment Act of 1994 required the surplus property and equipment to be used to benefit the homeless. Under the provisions of the GKDA's Master Plan for the Redevelopment of Kelly Air Force Base and Homeless Assistance Submission approved by HUD, housing located at KellyUSA are to be used for homeless families with children.

## II. SCOPE OF SERVICES

The City of San Antonio (City) and Greater Kelly Development Authority (GKDA) are seeking proposals from qualified Representatives of the Homeless (ROH) interested in leasing and providing for the operation/management of 12 surplus military housing apartments located in Billy Mitchell Village, Kelly USA, formerly part of Kelly Air Force Base. **The selected respondent will be required to provide all property management and homeless support services necessary to ensure the apartments are used exclusively as transitional housing for homeless families with children, and that they are properly maintained.**

The apartments, located on Calgary Avenue, KellyUSA, are referred to as the Calgary Units. The apartment complex consists of three separate buildings, each containing four apartments, ranging in size from 2 to 4 bedrooms. The complex also includes a small utility building and a covered parking area. The apartments have been vacant for approximately two years, and are currently being maintained by GDKA.

An ROH is defined as a public or private, profit or nonprofit organization that provides services to the homeless. **ROHs may partner to provide a comprehensive response, however, only one organization may be identified as the Respondent, and if selected will be the organization responsible for execution of a resulting Management Services Contract with the City and a lease for the apartments with GKDA. The proposal however, must identify all partners.**

The selected ROH must sign a City of San Antonio Management Services Contract and a GKDA lease for the Calgary Units within 15 days following City Council's approval to establish a contract for management services with the selected ROH.

The City will coordinate a lease between the selected ROH and GDKA for the apartments. GKDA will lease the apartments to the ROH for the amount of \$33,389.77 annually. This payment, which is non-negotiable, will be applied against base rent, Common Area Maintenance (CAM), Infrastructure Maintenance, Insurance, and amortization of the costs for upgrades

required for a Certificate of Occupancy. A copy of the GKDA lease for the Calgary Units in substantially final form is Exhibit A (page 17 of this RFP).

A planning budget reflecting operating costs for the apartments while vacant has been provided by GKDA and is ATTACHMENT B (page 42 of this RFP). **The City will provide \$35,000 to assist in funding this project, and will assist the selected ROH in securing additional funding. The selected ROH will be required to provide matching funds on a dollar for dollar basis. This match is not required to be cash. The fair market value of property or donated materials, staff salaries, or volunteer hours used to carry out the program funded with these funds, may be eligible match.** An ROH may elect to provide or contract for some services needed to manage or maintain the apartments, however, services included in the \$33,389.77 will be provided by the Greater Kelly Development Authority, without exception.

**The ROH selected to lease the apartments will be required to provide and fund all property management and homeless support services necessary to ensure the apartments are used exclusively as transitional housing for homeless families with children, and that they are properly maintained.** Key elements of services expected include identification and assignment of qualified tenants, maintenance of the facilities and grounds areas, development of maintenance schedules and emergency repair plans, and janitorial services. Further elaboration of the management services required is provided in ATTACHMENT C (page 43 of this RFP).

Other property management tasks may be assigned by modification to this contract at any time after the initial contract award.

### III. CERTIFICATIONS

Respondent warrants and certifies that Respondent and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### IV. TERM OF CONTRACT

A contract for management services and a lease for the apartments awarded in response to this RFP will be for a five (5) year period. The City and GKDA shall have the option of renewing their respective agreements with successful ROH for an additional five (5) years upon City Council and GKDA Board approval.

### V. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held at 143 Billy Mitchell Boulevard, Suite 6, San Antonio, Texas, on Monday, December 29, 2004 at 1:30 p.m. A tour of the Calgary Units will be conducted during the Pre-proposal Conference. This will be the only opportunity for potential respondents to view the apartments prior to submitting a proposal.

Respondents are encouraged to prepare and submit their questions in writing five (5) calendar days in advance of the Pre-Proposal Conference in order to expedite the proceedings. City's responses to questions received by this due date, may be distributed at the Pre-Proposal Conference and posted on the City's website at <http://www.sanantonio.gov/rfp/>. Respondents who do

not have access to the Internet must notify City in accordance with Section IX, Restrictions on Communication, if Respondent wishes to receive copies of City's responses by mail.

A training on completion of the Balanced Scorecard Performance Plan and Budget Forms will be held at 1:00 p.m. on Friday, January 9, 2004 at the Willie Velasquez Learning and Leadership Development Center 1302 N. Zarzamora St., San Antonio, Texas.

## **VI. PROPOSAL REQUIREMENTS**

Respondent's Proposal shall include the following items in the sequence specified on the Proposal Checklist (Form 9):

**6.1 RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE:** Complete and sign Respondent Qualification General Questionnaire. (Form 1)

**6.2 EXECUTIVE SUMMARY (Form 2):** Summary of the Respondents proposal; brief description of the agency's mission, experience overall and in San Antonio, proposed program and funding required. Limit summary to one page. Summary shall include the name of the applicant Agency, and name of the program as title. Describe the programs targeted population, goals, brief description of the services to be provided, identification of clients and eligibility requirements, the type of services provided and who will perform them.

**6.3 NARRATIVE (Form 3):** Detailed statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service, planned and available funding, and unique problems perceived by Respondent and their solutions. Please provide a clear and concise description of the program for which you are seeking funds using the format below. **The narrative portion of the application is limited to eight pages, not including attachments. Each component should use the forms provided.**

### ***History, Experience, Past Performance***

In rating the application, the City and GKDA will consider the extent to which the organization has the resources and experience necessary to implement the proposed activities in a timely manner as demonstrated by past performance.

1. Summarize the history and purpose of the organization's presence in San Antonio, to include the total number of years and with service contracts with the City.
2. Provide at least two examples of current and/or previous property management contracts (similar in complexity) relating to the provision of emergency shelter or transitional housing and homeless support services for homeless families. Demonstrate measurable progress in achieving the outcomes of the project. Provide the latest monitoring report for these projects.
3. Provide an organizational chart and resumes for key staff involved in this project. This should include, at a minimum, the organizations, Chief Executive Officer, Chief Financial Officer, and/or Program Manager, as applicable. These should be included in your proposal as Attachment A. Attachments do not count as part of the page limit.

4. Provide a copy of your most recent Audit and Management Letter. These should be included in your proposal as Attachment B. Attachments do not count as part of the page limit.

### ***Program Goal and Participant***

In rating the application, the City will consider the relationship and relevance of the program to the goals and indicators identified in the Scope of Services and the extent to which the organization understands the circumstances, culture, condition, and needs of the participant they propose to serve.

1. Provide a clear description of targeted participants, which captures critical and relevant information about the people served by this program. Demonstrate knowledge and understanding of conditions, challenges, and circumstances that led them to need services.

### ***Implementation Strategy***

In rating the application, the City and GKDA will consider the quality and soundness of the agency plan in addressing the participant needs identified.

1. Describe, in detail, the intended approach to managing the apartments and providing transitional housing for homeless families with children. Explain you your organization will provide all of the management services required. Further elaboration of the management services required is provided in Exhibit C (page 43 of this RFP).
2. Describe how the organization will provide homeless support services and promote workforce opportunities for homeless families or impact the overall economic environment of the community.
3. Specify any intermediary organizations or individuals whose involvement is critical to the success of the program and indicate how they will cooperate. Attach letters of support and/or memorandums of understanding for critical partnerships. These should be included in your proposal as Attachment C. Attachments do not count as part of the page limit.
4. Describe your property management software system (financial and operational) that is proposed to be used to assist in managing the property.

### ***Performance Measurement and Evaluation***

In rating the application, the City and GKDA will consider the quality of projected outcomes indicative of the participant condition and the soundness of the information system, which provides verification of outcomes.

1. Provide a clear narrative of projected outcomes logically related to your participant description and indicative of the success of your program.
2. Describe the system used to track and verify achievement of performance measures.

3. Complete the Balanced Scorecard Performance Plan (Form 4). Include in narrative.

#### 6.4 FUNDING BUDGET (Form 5)

In rating the application, the City and GKDA will consider the integrity of fiscal and programmatic accountability for service delivery. A planning budget reflecting operating costs for the apartments while vacant has been provided by GKDA and is ATTACHMENT B.

**The City will provide \$35,000 to assist in funding this project, and will assist the selected ROH in securing additional funding. The selected ROH will be required to provide matching funds on a dollar for dollar basis. This match is not required to be cash. The fair market value of property or donated materials, staff salaries, or volunteer hours used to carry out the program funded with these funds, may be eligible match.**

1. Explain how the applicant would continue to provide the proposed services in the event of termination of City funding for this project.
2. Describe leveraged resources such as funding or in-kind services from governmental entities, educational institutions, or private organizations/foundations in order to achieve the proposed outcomes. Show evidence (i.e., letters of support, award letter of funding from other agency, etc.) that the agency has partnered with other entities to make more effective use of available public or private resources. Attach letters of support and/or memorandums of understanding for critical partnerships. These should be included in your proposal as Attachment C. Attachments do not count as part of the page limit.
3. Complete the Funding Budget. This is an Excel Form, which is a separate attachment to this RFP.

6.5 DISCRETIONARY CONTRACTS DISCLOSURE: Completed Discretionary Contracts Disclosure Form (Form 6). If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.

6.6 LITIGATION DISCLOSURE: Completed Litigation Disclosure Form. (Form 7) If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.

6.7 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) POLICY REQUIREMENTS. Completed SBEDA form 8. (These forms are not required to be completed by Non-Profit organizations.)

6.8 PROPOSAL CHECKLIST: Completed Proposal Checklist (Form 9).

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE DOCUMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

## VII. AMENDMENTS TO RFP

Changes or amendments to this RFP may be posted on the City's website at <http://www.sanantonio.gov/rfp/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section IX, Restrictions on Communication, that Respondent wishes to receive copies of amendments to this RFP by mail.

## VIII. SUBMISSION OF PROPOSALS

8.1 Respondent shall submit eight (8) copies of the Proposal, in addition to the original signed in ink, in a sealed package, clearly marked on the front of the package **KellyUSA Property Management Services**. All Proposals must be received in the City Clerk's office no later than 3:00 p.m. central time, January 21, 2004 at the address below. Any Proposal received after this time shall not be considered.

Mailing Address:

City Clerk's Office, Attn: Department of Community Initiatives  
**KellyUSA Property Management Services**  
P.O. Box 839966,  
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Department of Community Initiatives  
**KellyUSA Property Management Services**  
100 Military Plaza  
2<sup>nd</sup> floor, City Hall  
San Antonio, Texas 78205.

Proposals sent by facsimile or email will not be accepted.

8.2 Proposal Format: Each proposal shall be typewritten and submitted on 8 1/2" x 11" white paper clipped, not bound. Proposals shall be submitted on the Forms provided. Electronic files shall not be included as part of the proposal; compact disks and/or computer disks submitted as part of the proposal shall not be considered. Each proposal must include the forms and attachments in the sequence listed in the Proposal Checklist with each page numbered. Failure to meet the above conditions may result in disqualification of the proposal.

8.3 Respondents who submit responses to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and



correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its proposal, the Director of Community Initiatives shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- 8.4 All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- 8.5 All proposals become the property of the City and GKDA upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City and GKDA cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- 8.6 Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Proposal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

## **IX. RESTRICTIONS ON COMMUNICATION**

Once the RFP has been released, Respondents are prohibited from communicating with City and GKDA staff regarding the RFP or Proposals, with the following exceptions:

- 9.1 Questions concerning this RFP shall be directed, in writing only, to the Department of Community Initiatives, Community Action Division attn: John B. Scarfo, Management Analyst, at P.O. Box 839966, San Antonio, Texas 78205. Verbal questions and explanations are not permitted other than as described by this section and during interviews, if any. It is suggested that all questions be sent by certified mail, return receipt requested; however, electronic submissions will be accepted by facsimile at (201) 207-7843, Attn: John Scarfo, or e-mail at [Jscarfo@sanantonio.gov](mailto:Jscarfo@sanantonio.gov) . No inquiries or questions will be answered if received after 3:00 p.m. on January 12, 2004, to allow ample time for distribution of answers and/or amendments to this RFP. Respondents wishing to receive copies of the questions and their responses must notify the City's Contact Person in writing prior to the date and time the questions are due.
- 9.2 Respondent shall not contact City or GKDA employees before an award has been made, except as set out herein. Violation of this provision by Respondent or his agent may lead to disqualification of his proposal from consideration.

9.3 The City and GKDA reserve the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by City.

## **X. EVALUATION CRITERIA**

The City and GKDA will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City and GKDA will appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City and GKDA elects to conduct interviews, Respondents may be interviewed and re-scored based upon this same criteria, or other criteria to be determined by the selection committee. The City and GKDA may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City and GKDA reserve the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council and the GKDA Board.

Evaluation criteria:

<b><i>History, Experience, Past Performance</i></b>	<b>25%</b>
<b><i>Program Goal and Participant Description</i></b>	<b>5%</b>
<b><i>Implementation Plan</i></b>	<b>20%</b>
<b><i>Performance Measures</i></b>	<b>10%</b>
<b><i>Funding Budget</i></b>	<b>10%</b>
<b><i>Responsiveness</i></b>	<b>10%</b>
<ol style="list-style-type: none"><li>1. Requested information included and thoroughness of response.</li><li>2. Understanding and acceptance of the scope of services.</li><li>3. Acceptance of the RFP and lease terms.</li><li>4. Clarity and conciseness of the response.</li></ol>	

### ***Small Business Economic Development Advocacy Program (SBEDA) – 20%***

NOTE: Non-profit organizations are not eligible to receive SBEDA points.

1. A maximum of ten percentage (10) points for Local Business Enterprises (LBEs).

Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points).

2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs(i.e. – 50% to HUEs = 2.5 points).

HUEs must be certified by the City's certifying agency or approved by the Director of Economic Development or designee.

3. A maximum of five percentage (5%) points for Prime Contractor compliance with the Small Business Economic Development Advocacy (SBEDA) policy:
  - i. One percent (1%) for submission/approval of the Good Faith Effort Plan.
  - ii. One percent (1%) for meeting/exceeding the MBE goal.
  - iii. One percent (1%) for meeting/exceeding the WBE goal.
  - iv. One percent (1%) for meeting/exceeding the AABE goal.
  - v. One percent (1%) for meeting/exceeding the SBE goal.

## **XI. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

- A. City and GKDA reserve the right to award one, more than one, or no contract(s) in response to this RFP.
  - B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City and GKDA, as determined by the selection committee, upon approval of the City Council.
  - C. City and GKDA may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
  - D. City and GKDA reserve the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City and GKDA also reserve the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- 10 GKDA will require the selected Respondent(s) to execute the lease agreement in substantially the form as attached, prior to GKDA Board award. No work shall commence until GKDA sign the lease document(s) and Respondent(s) provides the necessary evidence of insurance as required in this RFP and the lease. Lease documents are not binding on GKDA until approved by GKDA's legal counsel. In the event the parties cannot negotiate and execute a lease within the time specified, the City and GKDA reserve the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
  - 11 The City will require the selected Respondent(s) to execute a Delegate Agency Contract prior to City Council award. No work shall commence until City sign the contract document(s) and Respondent(s) provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, the City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

- 12 This RFP does not commit City or GKDA to enter into a Contract, award any services related to this RFP, nor does it obligate City or GKDA to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- 13 Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent; child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Part B, Section 10 of the City’s Ethics Code (Discretionary Contracts Disclosure – Form 6).

- K. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

L. INDEMNIFICATION REQUIREMENTS

**RESPONDENT, if selected, covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT’s, if selected, activities under this CONTRACT, including any acts or omissions of RESPONDENT, if selected, , any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any**

claim or demand against the CITY or RESPONDENT, if selected, known to RESPONDENT, if selected, related to or arising out of RESPONDENT's, if selected, activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's, if selected, cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT, if selected, to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. RESPONDENT, if selected, further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to CONSULTANT related to or arising out of contractor's activities under this contract.

#### M. Insurance Requirements.

If selected, Respondent will be required to comply with the Insurance Requirements established herein:

Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish an original completed Certificate(s) of Insurance to the Department of Community Initiatives, Community Action Division, Attn: John Scarfo, Management Analyst, which shall be clearly labeled **12 Apartment Complex Located at Billy Mitchell Village, KellyUSA for Use as Transitional Housing** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the Department of Community Initiatives, Community Action Division, Attn: John Scarfo, Management Analyst, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their

limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City.

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	<u>For Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$50,000
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

**The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten**

**(10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.**

Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officials, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

When there is a cancellation, non-renewal or material change in coverage, which is not made pursuant to a request by City, Respondent shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Respondent knows of said change in advance, or ten (10) days notice after the change, if the Respondent did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of San Antonio  
Risk Management  
Transfer of KellyUSA Surplus Property  
P. O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
Department of Community Initiatives  
Transfer of KellyUSA Surplus Property  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**If Respondent fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of Respondent to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent thereunder until Respondent demonstrates compliance with the requirements hereof.**

Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

## **XII. SCHEDULE OF EVENTS**

Following is a list of **projected dates** with respect to this RFP:

RFP Solicitation Period	December 22, 2003 – Jan 20, 2004
Pre-Proposal Conference	December 29, 2003 - 1:30 p.m.
BSPP and Budget Training	January 9, 2004 - 1:00 p.m.
Final Questions Accepted	January 12, 2004 - 3:00 p.m.
Proposals Due	January 21, 2004 - 3:00 p.m.
Evaluations Conducted	January 28, 2004
City Council Approval (tentative)	February 19, 2004
Contract Begins	March 1, 2004



**EXHIBIT A**

**GREATER KELLY DEVELOPMENT AUTHORITY  
CALGARY UNIT LEASE**

**SUBLEASE AGREEMENT**

Between

**GREATER KELLY DEVELOPMENT AUTHORITY**

"GKDA"

and

**REPRESENTATIVE OF THE HOMELESS**

"Tenant"

Covering 12 Residential Units known as

**The Calgary Units**

located at

KellyUSA

**SAN ANTONIO, TEXAS**

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT ("Sublease") is made and entered into by and between **Greater Kelly Development Authority** ("GKDA") as sublessor, and **Representative of the Homeless**, a \_\_\_\_\_ corporation ("Tenant"), as sublessee.

**1. RECITALS.**

1.1 The Secretary of the Air Force, on behalf of the United States of America (the "Government" or the "Air Force") pursuant to its authority under the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. § 2687 note) ("DBCRA") entered into an Economic Development Conveyance Agreement ("EDC Agreement") with Greater Kelly Development Corporation ("GKDC"), the predecessor-in-interest to GKDA, on July 24, 1997.

1.2 Pursuant to the Department of the Air Force Lease of Real Property on the Non-realigned Portions of Kelly Air Force Base, Texas, dated July 24, 1997 (the "Master Lease"), between the Government, as lessor, and GKDC, as lessee, a fully executed copy of which GKDA has provided to Tenant and the terms of which are fully incorporated into this Sublease, GKDA has leased land, improvements, and personal property comprising a portion of the Non-realigned Portions of Kelly Air Force Base, in the County of Bexar, State of Texas, which lands, improvements and personal property are more particularly described in such Master Lease and are collectively known as the "Master Leased Premises."

1.3 GKDA desires to sublease to Tenant, and Tenant desires to sublease from GKDA certain land, buildings, or portions thereof, as more particularly described in Section 4.2, below (the "Buildings"), and Tenant Designated Parking (defined in Paragraph 11), which Tenant Designated

Parking and Buildings are located on the Master Leased Premises, at the rental and subject to the terms, covenants and conditions set forth in this Sublease.

1.4 Capitalized terms not defined in this Sublease will be construed in accordance with the definitions ascribed to similar terms in the Master Lease.

**2. GRANT OF SUBLEASE.** In consideration of the mutual obligations of GKDA and Tenant set forth in this Sublease, GKDA subleases to Tenant, and Tenant takes from GKDA, the Premises (defined in Paragraph 4.2) to have and to hold, subject to the terms, covenants and conditions in this Sublease.

**3. MASTER LEASE.** Tenant acknowledges the following: (i) that Tenant has read the fully executed Master Lease provided to it by GKDA in its entirety and is familiar with all of its terms, including but not limited to, notices and warnings concerning environmental and structural conditions of the Premises as set forth in CONDITIONS 3, 10, 24 and 29 of the Master Lease, (ii) that Tenant will comply with the covenants, conditions, terms and obligations placed on it as GKDA's sublessee by the Government pursuant to **CONDITIONS 10, 17, and 24** of the Master Lease and (iii) that this Sublease is subject and subordinate in all respects to the Master Lease, as amended from time to time. Tenant agrees that nothing contained in this Sublease will be deemed to grant to Tenant any rights that would conflict with any of the covenants, terms and conditions of the Master Lease, and Tenant agrees that it will do nothing in, on or about the Premises which would result in the breach by GKDA of its undertakings and obligations, as Lessee, under the Master Lease. From and after the Commencement Date and continuing throughout the Term (defined in Paragraph 4.1), Tenant agrees to assume and be bound by all of the covenants, conditions and terms and to perform all duties, responsibilities and obligations of GKDA as Lessee, under the Master Lease to the extent they are applicable to the Premises, except for the payment of rental thereunder. Nothing contained in this Sublease will be construed as a guarantee by GKDA of any of the Government's obligations, covenants, warranties, agreements or undertakings under the Master Lease. [In the event of any inconsistencies between the terms of the Master Lease and the terms of this Sublease, the terms of the Master Lease will control. Despite any provision contained in the Master Lease, nothing therein will be deemed to reduce or eliminate any obligation of GKDA made or incurred under this Sublease.]

#### **4. TERM AND PREMISES**

4.1 Lease Term. The term ("Term") of this Sublease begins on \_\_\_\_\_, **2003**, (the "Commencement Date"), and ends on \_\_\_\_\_, **2008** ("Primary Term"). If the Extended Term (defined in Paragraph 6.1) is exercised as permitted, then all references to the "Term" in this Sublease will also include the period of time covered by the Extended Term.

4.2 Premises. The Premises are 12 residential units, known as the "**Calgary Units**," containing approximately **20,004 square feet** (the "Premises"), together with non-exclusive ingress/egress thereto, the Premises being more particularly described on the attached **APPENDIX A**.

4.3 Acceptance of the Premises. Tenant acknowledges that it has fully inspected the Premises and that there are no defects in the Premises and common areas surrounding the Premises that are vital to the use of the Premises for its intended residential purpose, subject only to the completion of initial repairs or replacements as set out on **APPENDIX B** hereto. Except as expressly provided in this Sublease, GKDA makes no warranty or representation, express or implied or arising by operation of law, with respect to the Premises including, but in no way limited

to, any warranty of condition, suitability or fitness for a particular purpose. Tenant will pay for the cost of the Certificate of Occupancy (a copy of which will be provided to GKDA) and any required inspection related to Tenant's occupancy of the Premises and Tenant will pay for all costs to bring the Premises up to standards required for a Certificate of Occupancy, except for the initial repairs or replacements as set out on **APPENDIX B**.

## **5. RENT.**

5.1 Payments to GKDA. Monthly payments to GKDA will include a "Base Rent" and "Additional Rent". For the first term, these payments will be **\$8,848.00 per annum for Base Rental** and **\$26,544.97 for Additional Rent** for a **Total Rental Payment of \$33,389.77 per annum**. The Total Rental Payment will be prepaid monthly, with the first payment made on the Commencement Date, and on the first day of every month thereafter until the end of the Term. All payments due for any fractional month will be pro-rated. The amount set for Base Rental is fixed and will not be adjusted in the event that a discrepancy is found in the actual square footage of the Premises. During the Extended Term, the Base Rental will increase as provided in Paragraph 6.1 below. GKDA will not send an invoice to Tenant for the Total Rental Payment, which Tenant is expected to timely pay as set out in this Sublease.

i. Base Rental. The Base Rental payment will establish a reserve fund for structural repairs and provide the GKDA with an asset management fee.

ii. Additional Rent. The Additional Rent payment is for the Amortization of Upgrades, an Infrastructure Charge (Section 7.1), Common Area Maintenance Charge (Section 7.2), and insurance premiums (Section 15). Upgrades to meet code requirements are detailed in Attachment B. The GKDA has established an allowance of \$50,000 to complete these repairs. If these repairs can be completed for a lesser sum, the Additional Rent requirement will be adjusted. The cost of these repairs will be amortized over the five-year lease term. The GKDA and the tenant will jointly determine the miscellaneous repairs and identify them in Attachment B. Any upgrades over-and-above these projects to obtain a certificate of occupancy will be the responsibility of the tenant.

## **6. EXTENDED TERM, TENANT IMPROVEMENTS AND RELOCATION SPACE.**

6.1 Extended Term. Tenant may extend the Term up to \_\_\_\_\_ [TBN] \_\_\_\_\_ each for a total of \_\_\_\_\_ years, at the Base Rental adjusted to then negotiated rates based on fair market values, however, Tenant may extend only if Tenant gives written notice of such extension to GKDA no later than 180 days prior to the date on which the Term would otherwise expire.

6.2 Tenant Improvements. Tenant may, during the Term, construct improvements to the Premises in accordance with plans and specifications approved in advance by GKDA and the Government pursuant to the terms of this Sublease and the terms of the EDC Agreement and the Master Lease, to be completed at the sole cost of Tenant and made in accordance with all the conditions set out in Section 12. Any improvements paid by Tenant will be subject to Texas state sales taxes. **Contact GKDA's property manager at (210) 362-7800 before conducting any work on the Premises.**

## **7. INFRASTRUCTURE AND COMMON AREA MAINTENANCE**

7.1 Tenant's Share of Infrastructure Capital and Repair Fee. As Additional Rental, Tenant agrees to pay to GKDA, on the same dates as payment of Base Rental, a fee for

infrastructure capital and repair to be used for repair and maintenance of storm water drainage facilities, roads, infrastructure and essential services ("Infrastructure Charge"), which amount will be estimated annually by GKDA. For the first 12 months of Primary Term, the Infrastructure Charge will be **\$4,000 per annum**. Tenant will also pay for any charges assessed directly by providers for special efforts made on Tenant's behalf, such as fees for fighting fires or for water rescues. The Infrastructure Charge will be adjusted annually on the anniversary date of this Sublease by the increase in the CPI, calculated by comparing the most current CPI that is available on that date to that CPI which is 12 months prior. "Consumer Price Index" or "CPI" means the CPI All Urban Consumers (Not Seasonally Adjusted) for the Houston-Galveston-Brazoria, Texas, all items (Base Period: 1982-84=100), as published by the Bureau of Labor Statistics, United States Department of Labor (or such other comparable statistic published by the Department of Labor if the CPI is not then published).

7.2 Tenant's Share of Common Area Maintenance Charges. As Additional Rental, Tenant agrees to pay to GKDA on the same dates as payment of Base Rental an amount for common area maintenance ("CAM Charge"), which amount will be estimated annually by GKDA. For the first 12 months of the Primary Term, the CAM Charge is estimated to be **\$6,000 per annum**. The amount actually incurred for common area maintenance will be reconciled annually at GKDA's fiscal year-end and Tenant will either pay upon demand any shortfall or will receive a rebate of any overcharge. The CAM Charge covers Tenant's pro rata share of:

- (i) all costs incurred by GKDA for the operation, maintenance and repair, and replacement of the Common Area as they are reasonably determined in the sole discretion of GKDA, and
- (ii) an administration fee equal to 15% of all CAM Charges payable by Tenant.

7.2.1. Common Area. Except for those site improvements defined as "Common Area," GKDA will not charge Tenant with any expense which is treated as a capital cost under generally accepted accounting practices nor any expense which is not treated as chargeable to tenants under leasing practices prevailing in the San Antonio industrial leasing market from time to time nor any expense incurred in performing GKDA's obligations under Paragraph 9. "Common Area" means those parts of the Master Leased Premises intended for the common use of subtenants of the Master Leased Premises; including but not limited to: common parking areas, driveways, sidewalks, landscaping, loading areas, private streets and alleys, exterior lighting facilities, but not including:

- (i) buildings, parking areas, storage facilities and associated truck ramps exclusively for the use of one subtenant,
- (ii) any new buildings when and if built on the Master Leased Premises, and
- (iii) streets and alleys maintained by a public authority.

7.2.2 Audit of CAM. If Tenant fails to request an audit, in writing, within 90 days after Tenant's receipt from GKDA of the statement for CAM Charge for the previous year, then the statement will be deemed correct and acceptable to Tenant. However, if Tenant delivers written notice to GKDA within 90 days, then Tenant (and its agents) will be provided reasonable access, for the following 60 days (the "Examination"), to examine CAM Charge records. The Examination will be made during normal business hours at GKDA's principal offices. Tenant's request for an audit does not relieve Tenant of its obligation to timely pay the CAM Charge. If Tenant fails to make the Examination then, the CAM Charge as set out in GKDA's statement will be deemed correct and acceptable to Tenant. If the Examination reveals that the CAM Charge is overstated, then the CAM Charge for that calendar year will be adjusted accordingly and (i) if the CAM Charge is overstated by less than 5%, Tenant will pay GKDA \$1,000.00 for GKDA's

administrative expenses, or (ii) if the CAM Charge is overstated by 5% or more, GKDA will reimburse Tenant \$1,000.00 for its costs associated with the Examination.

## **8. REAL PROPERTY TAXES AND PERSONAL PROPERTY TAXES**

8.1 Reduction or Elimination of Infrastructure Charge. At the Commencement Date hereof, no real property taxes are being assessed against the Premises due to its current ownership by the Government and may continue to be tax-exempt in the future due to GKDA's status as a local government. The Infrastructure Charge is needed to provide those services that would ordinarily be provided by public agencies with the collection of taxes. In the event that the Premises become subject to ad valorem taxes and those services are provided at no charge by public agencies then, as a result, the Infrastructure Charge will be reduced or eliminated accordingly. Additionally, in the event that Tenant pays a leasehold tax pursuant to Paragraph 8.3 below, such amount will be credited against Tenant's Infrastructure Charge.

### **8.2 Owner's Ad Valorem Taxes.**

(A) In the event that Owner's Ad Valorem Taxes accrue against the Premises, Tenant will be liable for and pay:

(i) 100% of the Owner's Ad Valorem Taxes for each and every Building (land and improvements valuation) fully occupied by Tenant; **and**

(ii) Tenant's "Proportionate Share" of partially leased Buildings; the Proportionate Share being a fraction, the numerator of which will be the number of gross rentable square feet leased by Tenant and the denominator of which is the total gross rentable square feet of the whole Building, multiplied by the tax due on the whole Building (land and improvements valuation); **and**

(iii) 100% of Owner's Ad Valorem Taxes against the Tenant's Designated Parking Areas; **and**

(iv) 100% of Owner's Ad Valorem Taxes that accrue, if ever, against the Premises to the extent due to improvements constructed thereon by Tenant.

(B) Tenant will pay any Owner's Ad Valorem Taxes described in clauses (i) through (iii) above to the appropriate authority in a timely manner and, in any event, prior to delinquency if and to the extent taxes are billed to Tenant by the taxing authority. If any Owner's Ad Valorem Taxes are billed to GKDA, GKDA will timely pay them and Tenant will reimburse GKDA upon demand.

(C) If, at any time during the Term of this Sublease, there is levied, assessed or imposed on GKDA a tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon rents from the Premises, in lieu of ad valorem taxes (collectively, the "Other Taxes"), then Other Taxes will be paid by Tenant to the appropriate authority in a timely manner or to GKDA upon demand.

(D) If Owner's Ad Valorem Taxes are assessed against GKDA, it will use its best efforts to cause the Premises hereunder to be separately assessed.

(E) GKDA has the right, but not the obligation, to employ a tax consulting firm to attempt to assure a fair tax burden on the Premises (excluding any personal property located thereon). Tenant agrees to pay its Proportionate Share of the cost of the consultant upon receipt. Upon receipt, GKDA will provide Tenant with a copy of the Bexar Appraisal District's valuation of the Premises and, if GKDA chooses to protest the valuation, Tenant may, at its expense, participate with GKDA in the protest but, if GKDA chooses not to protest the valuation, Tenant may do so at its cost.

8.3 Tenant's Leasehold Taxes. Tenant will promptly pay when due any taxes assessed by local, state or federal governments on Tenant's real property leasehold interest.

8.4 Personal Property Taxes. Tenant is liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises by Tenant. If any the taxes are levied or assessed against the Premises and (i) GKDA pays them or (ii) the assessed value of the Premises are increased by inclusion of personal property and fixtures and GKDA pays the increased taxes, then Tenant will reimburse GKDA, upon demand.

**9. GKDA'S REPAIRS AND MAINTENANCE** GKDA, at its own cost and expense, will maintain and, if necessary will replace the roof, and will maintain the structural soundness of the foundation and the structural soundness of exterior walls of the Buildings in good repair, reasonable wear and tear and damage caused by Tenant, its employees, contractors or agents excluded. The term "walls" will not include windows, glass or plate glass or any doors. Tenant will immediately give GKDA written notice of any known defect or need for repairs, after which GKDA will have reasonable opportunity to make the repairs or cure the defect.

## **10. TENANT'S REPAIRS AND MAINTENANCE**

10.1 Maintenance of Premises and Appurtenances. Tenant, at its own cost and expense, will (i) maintain, repair and, if necessary, replace all parts of the Premises, excluding those parts of the Premises to be maintained by GKDA pursuant to Paragraph 9, and promptly make all such necessary repairs and replacements to the Premises, and (ii) keep the parking areas, driveways and alleys surrounding the Premises in a safe and trash/debris-free condition. Tenant's obligation to maintain, repair and make replacements to the Premises will cover, but not be limited to, pest control (including termites), janitorial services, trash removal, building and grounds maintenance and the maintenance, repair and replacement of all HVAC, electrical, plumbing, sprinkler and other mechanical systems, and will be implemented according to standards established by GKDA.

10.2 Preventative System Maintenance. Tenant, at its own cost and expense, will enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by GKDA for servicing all hot water, heating and air conditioning, electrical, plumbing, sprinkler and other mechanical systems and equipment within the Premises. The service contracts must include all services suggested by the equipment manufacturer and must become effective within 30 days of the date Tenant takes possession of the Premises and continue in effect throughout the Term.

10.3 GKDA's Option to Maintain Premises. If Tenant fails to maintain the Premises in accordance with the terms of this Section 10 and, after 30 days written notice, GKDA has the right to perform, in whole or in part, maintenance, repairs and replacements to the Premises that are otherwise Tenant's obligations under this Section 10; in which event Tenant will be liable for the cost and expense of these repairs, replacements, maintenance and other similar items and will reimburse GKDA upon demand.

**11. PARKING.** Tenant and its employees, customers and licensees have the right to use any common parking areas and parking areas that have been designated for Tenant's use by GKDA in writing ("Tenant Designated Parking"), subject to (i) all rules and regulations promulgated by GKDA, and (ii) rights of ingress and egress of other lessees or sublessees of the Master Leased Premises. Tenant will fully maintain Tenant's Designated Parking at Tenant's cost. GKDA will not be responsible for enforcing Tenant's parking rights against any third parties. Tenant agrees not to park on any public or private streets adjacent to or in the vicinity of the Premises.

**12. ALTERATIONS; TRADE FIXTURES AND RETURN CONDITION.**

12.1 Approvals for Alterations. Tenant will not make any alterations, additions or improvements ("Alterations") to the Premises without the prior written approval of GKDA and GKDA's approval will require the submission of a complete set of plans and specifications and a complete list of subcontractors and bids ("Submissions"). Tenant will provide prior written notice to GKDA and to the Government, accompanied by a detailed written description, for any proposed Alterations, that may impede or impair any activities under the Kelly AFB Installation Restoration Program ("IRP") or the State Permit and Compliance Plan ("SPCP") or are to be undertaken in areas of the Master Leased Premises referred to as "Areas of Special Notice" (see Exhibit "F" to the Master Lease).

12.2 Asbestos/ADA. Before beginning any Alterations, Tenant will determine whether asbestos is present on the Premises. If Tenant intends to make Alterations that require the removal of asbestos, Tenant will submit an appropriate asbestos disposal plan to the Senior Representative. Tenant will be responsible for compliance with The Americans With Disabilities Act of 1990, as it applies to Tenant and its uses during the Term hereof.

12.3 Payment/Performance Bonds. Unless the cost of the Alterations are less than \$50,000.00, Tenant will have its contractors procure payment and performance bonds in form and content acceptable to GKDA before beginning the Alterations and Tenant will, during the construction of any Alterations, withhold a retainage equal to at least 10% of the cost of the Alterations until the expiration of 30 days following the completion thereof in order to protect the Premises and Master Leased Premises against liens and encumbrances.

12.4 General Requirements. All Alterations will be performed in compliance with all applicable governmental laws, regulations, codes, standards and any other requirements under the Master Lease and in a good and workmanlike manner so as not to damage or alter the primary structure or structural qualities of the Buildings or other improvements situated on the Premises. The Government and GKDA review process for any proposed Alterations will be completed within 30 days of the receipt of Submissions and, on the 31st day, Tenant's request will be deemed approved if Tenant has not received notification otherwise.

**13. SIGNS.** Signs, including the size, location, design and content, will comply with the criteria provided by GKDA. Tenant may not place any other signs on the exterior of the Premises without GKDA's prior written approval. Tenant will, at Tenant's sole expense, repair, paint or replace the Building fascia surface to which its signs are or become attached upon Tenant's vacating the Premises or upon the removal or alteration of its signage. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises must conform in all respects to the criteria established by GKDA. Tenant will not, without GKDA's prior written consent:

(i) make any changes to the exterior of the Premises, such as painting;

- (ii) install any exterior lights, decorations, flags, or banners; or
- (iii) erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type that can be viewed from the exterior of the Premises.

## **14. UTILITIES.**

14.1 Utilities at Tenant's Cost. GKDA agrees to make available, through third party utility providers, at Tenant's expense, normal water, gas and electricity service to the Premises. Tenant will pay on demand to GKDA or the utility provider as applicable for utilities and services used by Tenant on or at the Premises, together with any taxes, penalties, or surcharges pertaining to the Tenant's utility use and any maintenance charges for utilities imposed by the utility providers. GKDA may require all utilities be separately metered to the Premises (or each building, if more than one) by GKDA or its utility providers, at Tenant's expense. Tenant will pay its pro rata share, as reasonably determined by GKDA, of all charges for jointly metered utilities.

14.2 Water and Sanitary Sewer. In the event water is not separately metered to Tenant, Tenant agrees that it will not use water and sanitary sewer capacity for uses other than domestic restroom and kitchen usage. Tenant agrees to reimburse GKDA on demand for the entire amount of water and sanitary sewer costs if, in fact, Tenant uses water or sewer capacity for uses other than domestic restroom and kitchen usage, including but not limited to, the cost for acquiring additional sanitary sewer capacity to service Tenant's excess sanitary sewer use.

14.3 Interruption of Utility Service. GKDA will not be liable for any interruption or failure of utility service on the Premises, and Tenant has no rights or claims as a result of any failure, except that if the Premises are rendered unusable by Tenant in whole or in substantial part by reason of a material interruption in the supply of any utility service, which continues for more than 48 hours after written notice to GKDA by Tenant, rent will abate with respect to the portion of the Premises so affected from the end of the 48 hour period until the utility service is restored, unless the interruption is caused by the act or omission of Tenant or Acts of God or failure caused by the third-party utility provider, in which event rent will not abate.

14.4 Utilities Exclusive to GKDA. All utility providers, including but not limited to water, sanitary sewer, electricity, gas, and all future technologies related to the delivery of those utilities, will be only those chosen by GKDA and Tenant has no right to contract with or otherwise engage anyone to provide these utilities. Tenant agrees that this Sublease will be subordinate to rights-of-way granted, now and in the future, to these utility providers by GKDA or the Air Force and Tenant will execute subordinations reasonably acceptable to Tenant to these utility providers upon request.

14.5 Telephone Services. Local exchange carriers such as Southwestern Bell Telephone and Time Warner provide dial tone and cable service. The tenant will be responsible for establishing and paying for service.

## **15. INSURANCE.**

### **15.1 GKDA's Insurance**

(A) Property Insurance. During the Term of this Sublease, GKDA will maintain fire and extended insurance coverage for the full replacement cost of the Buildings including improvements, alterations, additions and changes thereto (GKDA's Property Insurance"), but excluding Tenant's trade fixtures, equipment, inventory and personal property located therein (even



that personal property owned by GKDA or Government and leased or supplied to Tenant). Tenant will pay to GKDA all of the premium for GKDA's Property Insurance for the Buildings (or Tenant's Proportionate Share for any Building that Tenant does not occupy exclusively). Tenant agrees to pay to GKDA, on the same dates as payment of Base Rental, **\$5,001 per annum**, which is an estimate of the annual premium. The insurance premium will be reconciled when the CAM Charge is reconciled, in accordance with Paragraph 7.02, and Tenant will either pay, upon demand, any shortfall or will receive a rebate of any overage. Upon request of Tenant, GKDA will provide Tenant evidence that the insurance is in force.

(B) Environmental Insurance. At its option, GKDA will maintain an umbrella insurance policy to protect it from claims for environmental contamination liability. The insurance company will establish the Tenant's rating as one aspect of a risk assessment that is required to activate a tenant's endorsement under the GKDA umbrella policy. In order to underwrite GKDA's coverage and to provide Tenant endorsement as an additional insured, the insurance company and GKDA will jointly perform the required risk assessment in cooperation with the Tenant, which risk assessment will be based on commercially reasonable standards. In the event any activity of Tenant causes an increase in GKDA's premium, Tenant will pay the same. Tenant will not cause or allow to be caused any activity on the Premises that would have the effect of negating GKDA's environmental insurance coverage.

15.2 Tenant's Insurance. During the Term of this Sublease, Tenant, at its expense, will maintain in effect:

(A) a policy of commercial general liability insurance, on an "occurrence basis," covering against all claims on account of death, bodily injury, personal injury and property damage, occurring in connection with Tenant's use or occupancy of the Premises with policy limits of not less than **\$2 million** each for general aggregate limit and products/completed operations aggregate limit; and **\$1 million** each for personal/advertising injury limit and per occurrence limit; **\$100,000** for fire damage in any one fire and **\$5,000** medical expense limit for any one person ("Tenant's Liability Insurance");

(B) workers' compensation or similar insurance affording not less than statutory coverage and providing not less than statutory limits of benefits; and

(C) fire and extended coverage insurance covering Tenant's furniture, trade fixtures, equipment, inventory and personal property located in, on or about the Premises (including that which is provided by Government or leased from GKDA) in an amount satisfactory to Tenant ("Tenant's Property Insurance").

15.3 GKDA as Additional Insured. Tenant's Liability Insurance will name GKDA, the Government and the City as additional insureds to include a contractual liability endorsement (**CG #2026-1185**) and to insure GKDA's, the Government's and the City's contingent liability under or in connection with this Sublease (except for the worker's compensation policy, which instead will include, to the extent permitted by applicable or in connection with this Sublease (except for the worker's compensation policy, which instead will include, to the extent permitted by applicable law, a waiver of subrogation endorsement in favor of the Government, the City and GKDA). All must:

(A) be issued by an insurance company which is reasonably acceptable to the Government, the City and GKDA;

(B) provide that no material change in coverage will be effective until at least 30 days prior written notice is received and approved by Government, the City and GKDA and that the insurance will not be canceled unless 30 days prior written notice has been given to the Government, the City and GKDA;

(C) provide that any losses will be payable notwithstanding any act, failure to act or negligence of GKDA, the City or the Government, together with their respective agents, elected officials, employees, officers and representatives, individually or collectively; and

(D) name the Government as an additional insured as follows: United States of America, c/o AFBCA, 1700 N. Moore St., Suite 2300, Arlington, VA 22209. Certificates of insurance will be delivered to the Government and to GKDA by Tenant on or before the Commencement Date and not less than 30 days prior to each renewal of thereof.

15.4 Prohibited Uses. If any increase in the cost of any insurance on the Premises or the Buildings are caused by Tenant's use of the Premises or because Tenant vacates the Premises, then Tenant will pay the amount of such increase to GKDA upon demand. Tenant will not permit the Premises to be used for any purpose or in any manner that would:

- (i) void the insurance thereon,
- (ii) increase by any material amount the insurance risk or cost thereof unless Tenant makes the payment required pursuant to the last sentence of this Paragraph 15.4, or
- (iii) cause the disallowance of any sprinkler credits; including without limitation, use of the Premises for the receipt, storage, handling or use of any product, material or merchandise that is explosive or highly inflammable except as used by Tenant in the ordinary course of its business and in accordance with all applicable state and federal law.

## **16. FIRE AND CASUALTY DAMAGE.**

16.1 Damage or Destruction. If 50% or less of any of the Buildings are damaged by any peril covered by GKDA's Property Insurance maintained by GKDA under Paragraph 15.1, then this Sublease will not terminate and GKDA will receive the proceeds from GKDA's Property Insurance and will use those proceeds to substantially restore the Premises to its previous condition, except that GKDA will not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant except for those constructed as Initial Tenant Improvements. The rent will be abated on only the part of the Premises damaged beyond Tenant's then use in accordance with this Sublease and only so long as the damage was not caused by the acts or omissions of Tenant, its agents or invitees. If the damaged part of the Premises cannot be repaired within 180 days or if more than 50% of the Premises then in use by Tenant is damaged, then either GKDA or Tenant may terminate this Sublease.

16.2 Lienholders' Rights in Proceeds. Notwithstanding anything herein to the contrary, if the damaged Premises cannot be restored within 12 months and, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or this Sublease requires that GKDA's Property Insurance proceeds be applied to such indebtedness, then GKDA has the right to: (i) at GKDA's sole discretion, use other resources to rebuild the Premises as set out in Paragraph 16.1; or (ii) terminate this Sublease by delivering 30 days written notice of termination to Tenant, whereupon all rights and obligations hereunder will cease and terminate.

## **17. LIABILITY AND INDEMNIFICATION**

### **17.1 Tenant's Indemnification of GKDA, et al.**

(A) Tenant will indemnify, defend, and hold harmless GKDA and its board of directors, the Government, and the City, together with their respective agents, elected officials, employees and officers, individually or collectively (the "Indemnitees"), from and against all suits, actions, losses, damages, demands, judgments, claims, or liability of any character, type or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and reasonable attorneys' and experts' fees, for injury or death to any person, or loss or damage to any property, received or sustained by any person, or persons, or property (the "losses"), to the extent arising out of, or occasioned by, acts or omissions of the Tenant arising out of Tenant's use of the Premises, or any Building, or from the conduct of Tenant's business, or from any activity, work, or thing done, permitted, or suffered by Tenant, in or about the Premises or any Building.

(B) To the extent allowed by Texas law, Tenant's subtenants and contractors will be contractually bound in the sublease or contract between the Tenant and subtenants to indemnify, defend, and hold harmless the Indemnitees from and against all suits, actions, losses, damages, demands, judgments, claims or liability of any character, type or description to the extent arising out of, or occasioned by, the acts or omissions of the subtenants, contractors or their sub-tier subcontractors, agents, employees or invitees of any of them, in the execution of the performance of the sublease or contract. The term "contractors" means persons (i) who provide equipment maintenance services on the Premises; (ii) who make repairs on or improvements to the Premises; or (iii) who manufacture inherently dangerous goods to be used on the Premises.

(C) The foregoing obligations of Tenant and its subtenants and contractors (the "Indemnitors") are conditioned upon: (i) Indemnitors being given control of the defense of any claim and all negotiations relative to the settlement thereof and the Indemnitees cooperating with the Indemnitors in any defense (except that the Government reserves the right, at its sole expense, to select its own legal counsel to participate in its defense), and (ii) the Indemnitees inform the Indemnitors in writing within 60 days of any claim or occurrence that is likely to give rise to a claim under this Paragraph 17.1

(D) It is agreed by the parties that for any losses arising out of, or occasioned by, any acts or omissions of Tenant or its subtenants or contractors in combination with any acts or omissions of one or more of the Indemnitees, then to the extent Tenant or its subtenants and contractors would otherwise be liable under Texas law, Tenant will be liable for only that portion of the losses attributable to (i) the acts or omissions of Tenant; and (ii) the acts or omissions of Tenant's subtenants and contractors.

(E) However, it is agreed by the parties that the above indemnification provided by the Tenant and its subtenants and contractors to the Indemnitees, will not apply to suits, actions, losses, damages, demands, judgments, claims or liability of any character, type or description arising solely out of the acts or omissions of the Indemnitees.

(F) The indemnification provided by Tenant and its subtenants and contractors in this Paragraph 17.1 will not apply to any losses to the extent arising out of, or occasioned by any, acts or omissions of any registered professional engineers or architects, either independently engaged, or directly employed by any of the Indemnitees

for the preparation or approval of any defective plans, designs, or specifications used in the preparation and renovation of the subject Premises, or any Building.

(G) It is acknowledged by the parties that the Air Force has certain obligations pursuant to section 330 of the National Defense Authorization Act, 1993, pub l. No. 102-484, as amended, which provides for indemnification of certain transferees of closing defense property; in pertinent part:

The Secretary of Defense shall hold eligible parties harmless, and defend and indemnify them in full, from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any way predicated upon, the release or threatened release of any hazardous substance, pollutant, or contaminant, or petroleum or petroleum derivative, as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

**17.2. Limits on Liability of GKDA, et al.** Neither the Government, the City nor GKDA, together with their respective agents, elected officials, employees, officers and representatives, individually and collectively ("GKDA, Et Al") will be liable in any event for personal injury or loss of Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities or other occurrences. Tenant will give prompt notice to GKDA of any significant accidents involving injury to persons or property. Furthermore, GKDA, Et Al, will not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of the Buildings or the Master Leased Premises, regardless of whether such loss occurs when the area is locked against entry. GKDA, Et Al will not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any sublessees or their agents or invitees anywhere on the Master Leased Premises, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Tenant will give GKDA prompt notice of any criminal conduct it actually observes within or about the Premises, or any personal injury or property damage caused thereby. GKDA may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent these are obtained at GKDA's sole discretion, GKDA, Et Al, will not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. GKDA will use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises, and GKDA will not be responsible for additional lighting or any security measures in the Master Leased Premises, the Premises, or the parking areas.

**18. USE.** The Premises will be used to provide transitional housing for homeless families with children (only one family per unit) and for no other use unless approved in writing by GKDA and the Government. Tenant will comply with all governmental laws, ordinances and regulations including but not limited to the Emergency Planning Community Right to Know Act (42 U.S.C.

§11001) regarding hazardous materials stored on the Master Leased Premises applicable to the use of the Premises and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant will not use the Premises in any manner prohibited in Condition 24 of the Master Lease, permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger GKDA or any other lessees or sublessees of the Buildings or on the Master Leased Premises.

## **19. HAZARDOUS WASTE AND ENVIRONMENTAL LAW VIOLATIONS.**

[Intentionally omitted.]

## **20. RIGHT OF ENTRY AND CLOSEOUT INSPECTION.**

20.1 Right of Entry. The Government's and GKDA's agents and representatives have the right to enter the Premises at any reasonable time during business hours, with 24 hours notice (or at any time in case of emergency):

- (i) to inspect the Premises for any reason,
- (ii) to maintain, repair, connect, extend, and modify utilities,
- (iii) to make any other repairs as may be required or permitted pursuant to this

Sublease, and

(iv) during the last 6 months of the Term, for the purpose of showing the Premises and to install signs stating the Premises are available for lease.

20.2 Closeout Inspection. Tenant will notify GKDA in writing at least 90 days prior to vacating the Premises and Tenant will arrange to meet with GKDA for a joint operational close-out inspection by GKDA's property manager and, if required by GKDA, an environmental due diligence report to be paid by Tenant. Tenant will pay to close-out all of Tenant's regulatory permits. If Tenant fails to give notice or to arrange for inspection, then GKDA's close-out inspection of the Premises will be deemed correct for the purpose of determining Tenant's responsibility for repairs and restoration of the Premises, and Tenant's liability for environmental contamination.

## **21. ASSIGNMENT AND SUBLETTING.**

21.1 Approval Required. Tenant does not have the right to sublet the Premises, assign or otherwise transfer or encumber this Sublease, or any interest in this Sublease, without the prior written consent of GKDA; except that no consent will be required to transfer, assign or sublease to any subsidiary or corporate affiliate of Tenant so long as Tenant remains fully liable to perform all of its obligations under this Sublease. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of the terms and covenants of this Section 21 will be void.

21.2 Transferees. Any assignee, sublessee or transferee of Tenant's interest in this Sublease (collectively referred to as "Transferees"), by assuming Tenant's obligations hereunder, will assume liability to GKDA for the payment of all amounts payable by Tenant and the performance of all obligations of Tenant hereunder. No assignment, subletting or other transfer, whether or not consented to by GKDA or permitted hereunder, will relieve Tenant of its liability under this Sublease. If an Event of Default occurs while the Premises or any part thereof are assigned or sublet, then, in addition to any other remedies provided in Section 26 or provided by law, GKDA may collect directly from Transferee all rents payable to the Tenant or GKDA and apply the collected rent against any amounts due GKDA under this Sublease. This collection will

not be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations under this Sublease. If GKDA consents to any subletting or assignment by Tenant and any category of rent subsequently received by Tenant under any sublease is in excess of the same category of rent payable under this Sublease, or any additional consideration is paid to Tenant by the assignee under any assignment, then GKDA may declare excess rents under any sublease or additional consideration for any assignment to be due and payable to GKDA as additional rent under this Sublease.

**21.3 Change of Ownership of Tenant.** The following will additionally constitute an assignment of this Sublease by Tenant for the purposes of this Section 21: (i) if Tenant is a corporation, any merger, consolidation, dissolution or liquidation, or any change in ownership or power to vote of 30% or more of Tenant's outstanding voting stock; (ii) if Tenant is a partnership, joint venture or other entity, any liquidation, dissolution or transfer of ownership of any interests totaling 50% or more of the total interests in such entity; (iii) the sale, transfer, exchange, liquidation or other distribution of more than 50% of Tenant's assets, other than this Sublease; or (iv) the mortgage, pledge, hypothecation or other encumbrance of or grant of a security interest by Tenant in this Sublease, or of any of Tenant's rights hereunder.

**22. CONDEMNATION.** If 50% or more of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were subleased to Tenant, then this Sublease will terminate and the rent will be abated during the unexpired portion of this Sublease, effective on the date of taking. If less than 50% of the Premises are taken for any public or quasi-public use under any governmental laws, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, or if the taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which they were subleased to Tenant, then this Sublease will not terminate, but the rent payable during the unexpired portion of this Sublease will be reduced to the extent as may be fair and reasonable under the circumstances. All compensation awarded in connection with or as a result of any of the foregoing proceedings will be the property of GKDA, and Tenant hereby assigns any interest in any award to GKDA; except GKDA will have no interest in any award made to Tenant for the loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property or for relocation expense, whether or not a separate award for such items is made to Tenant. If the condemnation procedures of the relevant jurisdiction do not permit separate claims by landlords and tenants, GKDA's award will be equitably divided between GKDA and Tenant to compensate Tenant for lost tenant improvements installed by Tenant (not including Initial Tenant Improvements), business disruption, and the cost of moving Tenant's business and goods to an alternate location.

**23. HOLDING OVER.** At the termination of this Sublease by its expiration or otherwise, Tenant will immediately deliver possession of the Premises to GKDA with all repairs and maintenance required in this Sublease to be performed by Tenant completed. If, for any reason, Tenant retains possession of the Premises after the expiration or termination of this Sublease, or unless the parties hereto otherwise agree in writing, Tenant's possession will be deemed to be a tenancy at will only, and all of the other terms and provisions of this Sublease will be applicable during this hold-over period, except that Tenant will pay GKDA from time to time, upon demand, as rental an amount equal to 150% of the Base Rental, this amount computed on a daily basis for each day of such period. No holding over by Tenant, whether with or without consent of GKDA, will operate to extend this Sublease except as otherwise expressly provided. The preceding provisions of this Paragraph 23 will not be construed as consent for Tenant to retain possession of the Premises in the absence of written consent thereto by GKDA.

**24. QUIET ENJOYMENT.** Upon payment by Tenant of the Base Rental and all other sums due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant will peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by GKDA or any other person lawfully or equitably claiming by, through or under GKDA. The Tenant expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to the SPCP or the IRP may impact Tenant's quiet use and enjoyment of the Premises. To the greatest extent possible, GKDA and Government will forewarn, advise, consult and cooperate with Tenant to schedule any interfering remedial activities of GKDA and/or Government in a manner as to reasonably minimize anticipated impacts upon Tenant's production activities. The Tenant agrees that notwithstanding any other provision of the Master Lease or this Sublease, the Government and GKDA assume no liability to the Tenant should implementation of the SPCP, the IRP, or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Tenant's use of the Premises. Tenant will have no claim against the United States or any officer, agent, employee or contractor thereof or GKDA nor will Tenant be entitled to any offset of rental pursuant to the terms of this Sublease on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the SPCP or the IRP or under the Master Lease, this Sublease or otherwise, and there will be no abatement of rent.

**25. EVENTS OF DEFAULT.** Each of the following events ("Event of Default") will be deemed to be a default in or breach of Tenant's obligations under this Sublease:

25.1 Failure to Pay. If Tenant fails to pay any installment of the rent required herein when due, or any other payment or reimbursement to GKDA required in this Sublease when due, and Tenant's failure continues for a period of 10 days after the date of written notice from GKDA, except Tenant is entitled to only two 10 day notices per each 12 month period, after which failure to pay is an immediate default.

25.2 Vacation or Abandonment. If Tenant vacates or abandons all or a substantial portion of the Premises for more than 6 months whether or not Tenant is in default of the rental payments due under this Sublease.

25.3 Liens on Premises. If Tenant fails to discharge any lien placed upon the Premises in violation of Paragraphs 27 and 28 hereof within 30 days after any such lien or encumbrance is filed against the Premises.

25.4 All other Lease Violations. If Tenant fails to comply with any term, provision or covenant of this Sublease (other than those listed above in this Section) and has not cured such failure within 30 days after the date of written notice from GKDA. If, however, the time required to return to compliance exceeds the 30 day period, Tenant will not be in default if Tenant, within the 30-day period, begins the actions necessary to bring it into compliance with this Sublease in accordance with a compliance schedule submitted to, and accepted by GKDA.

25.5 Chronic Violations. If Tenant fails more than twice within any 12 month period to observe or perform any covenant, condition or agreement of this Sublease (including without limitation, the payment of rent), regardless of whether such defaults have been cured by Tenant, any subsequent default will at the election of GKDA, in its sole and absolute discretion, be deemed a non-curable Event of Default.

25.6 Falsification of Information. If Tenant or any agent of Tenant falsifies any report or misrepresents other information required to be furnished to GKDA pursuant to this Sublease.

25.7 Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Paragraph 21.3 hereof.

25.8 Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations; or the commencement of steps or proceedings toward the dissolution, winding up or other termination of the existence of the Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

25.9 Bankruptcy. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within 30 days after the date of its filing.

25.10 Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's Sublease obligations for the benefit of its creditors, or if in any other manner Tenant's interest in this Sublease passes to another by operation of law, including without limitation, by attachment, execution or similar legal process, which is not discharged or vacated with 30 days.

25.11 Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's Sublease obligations, unless such appointment is vacated within 30 days of its entry.

25.12 Evidence of Inability to Pay. Evidence of inability of Tenant or of any guarantor of Tenant's Sublease obligations to pay its debts as they come due. Such evidence will include, but will not be limited to, the following:

- (i) An admission in writing by Tenant or any such guarantor of its inability to pay its debts when due; or
- (ii) If one or more judgments are docketed against Tenant or any such guarantor and not paid, bonded or otherwise discharged with 30 days.

25.13 Diminution in Financial Status of Guarantor. The net worth of Guarantor, if any, is reduced to an amount less than \$\_\_\_\_\_ or any of Guarantor's debt securities are rated by any national rating firm at less than investment grade.

25.14 Violation of Operating Contract. Tenant is under contract with the City of San Antonio, dated \_\_\_\_\_ (the "Contract"), to provide services to homeless families with children including shelter. In the event the Tenant breaches any term of the Contract and the City of San Antonio thereby terminates the Contract, then GKDA may terminate this Sublease.



## **26. REMEDIES UPON DEFAULT.**

26.1 Right to Terminate or Repossess. Upon each occurrence of an Event of Default, GKDA has the option to pursue any one or more of the following remedies without any notice or demand:

- (A) Terminate this Sublease;
- (B) Enter upon and take possession of the Premises without terminating this Sublease;
- (C) Make payments or take actions to fulfill whatever Tenant is obligated to pay or perform under the terms of this Sublease, and Tenant agrees that GKDA will not be liable for any damages resulting to Tenant from such actions;
- (D) And in the event that GKDA elects to terminate or repossess, Tenant will immediately vacate the Premises, and if Tenant fails to do so, GKDA, without waiving any other remedy it may have, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefore. In the event of any violation of Section 93.002 of the Texas Property Code by GKDA or by any agent or employee of GKDA, Tenant hereby expressly waives any and all rights Tenant may have under paragraph (g) of Section 93.002.

26.2 Damages Upon Termination. If GKDA terminates this Sublease pursuant to paragraph 26.1, Tenant will be liable for and will pay to GKDA the sum of all rental and other payments owed to GKDA under this Sublease accrued to the date of termination, plus, as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Paragraph 4.1 (as extended, if applicable), less (ii) the present value of the then fair market rental for the Premises for such period, provided that, because of the difficulty of ascertaining the fair market value and in order to achieve a reasonable estimate of liquidated damages, GKDA and Tenant stipulate and agree that the fair market rental does not exceed 75% of the rental amount for such period as set forth in Paragraph 5.

26.3 Damages Upon Repossession. If GKDA repossesses the Premises pursuant to paragraph 26.1 without terminating this Sublease, Tenant will be liable for and will pay GKDA on demand all rental and other payments owed to GKDA under this Sublease, accrued to the date of repossession, plus all rental and other payments owed under this Sublease for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Paragraph 4.1 (as extended, if applicable), diminished by all amounts actually received by GKDA through reletting the Premises during the remaining Term. Actions to collect amounts due by Tenant to GKDA under this paragraph may be brought from time to time without the necessity of GKDA's waiting until expiration of the Term.

26.4 Costs of Reletting, Removing, Repairs and Enforcement. Upon an Event of Default, in addition to any amount required to be paid under this Section 26, Tenant also will be liable for and will pay to GKDA (i) reasonable brokers' fees, and all other costs and expenses incurred by GKDA in connection with reletting the whole or any part of the Premises; (ii) the costs of removing, storing or disposing of Tenant's or any other occupant's property; (iii) the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new sublessee; (iv) any and all costs and expenses incurred by GKDA in effecting compliance with Tenant's

obligations under this Sublease; and (v) all reasonable expenses incurred in connection with such enforcement or defense, including but not limited to reasonable attorneys' fees.

26.5 Late Charge. In the event Tenant fails to make any payment due under this Sublease within 5 days after such payment is due, including without limitation any rental payment, in order to help defray the additional cost to GKDA for processing late payments and not as interest, Tenant will pay to GKDA on demand a late charge in an amount equal to 5% of such payment. The late charge will be in addition to all of GKDA's other rights and remedies under this Sublease or at law, and will not be construed as liquidated damages or as limiting GKDA's remedies in any manner.

26.6 Interest on Past Due Amounts. If Tenant fails to pay to GKDA when due any sum under any provision of this Sublease and Tenant's failure to pay continues for 10 days after the due date, then Tenant will pay to GKDA interest on the overdue amounts from the date due until paid at an annual rate which equals the lesser of 18% or the highest rate then permitted by law.

26.7 No Implied Acceptances or Waivers. Exercise by GKDA of any one or more remedies hereunder or otherwise available will not be deemed to be an acceptance by GKDA of Tenant's surrender of the Premises, it being understood that Tenant's surrender can be effected only by the written agreement of GKDA. Tenant and GKDA further agree that forbearance by GKDA to enforce any of its rights under this Sublease or at law or in equity will not be a waiver of GKDA's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by GKDA will be construed as an election on its part to terminate this Sublease, unless a written notice of such intention is given to Tenant, and, notwithstanding any reletting or re-entry or taking possession of the Premises, GKDA may at any time thereafter elect to terminate this Sublease for a previous default. Pursuit of any remedies provided in this Section 26 will not preclude the pursuit of any other remedy provided under this Sublease or any other remedies provided by law, nor will pursuit of any remedy provided under this Sublease constitute a forfeiture or waiver of any rent due to GKDA under this Sublease or of any damages occurring to GKDA by reason of the violation of any of the terms, provisions and covenants contained in this Sublease. GKDA's acceptance of any rent following an Event of Default under this Sublease will not be construed as GKDA's waiver of the Event of Default. No waiver by GKDA of any violation or breach of any of the terms, provisions and covenants of this Sublease will be deemed or construed to constitute a waiver of any other violation or default.

26.8 Reletting of Premises. In the event of any termination of this Sublease and/or repossession of the Premises due to an Event of Default, GKDA will use reasonable efforts to re-let the Premises and to collect rental after reletting, with no obligation to accept any sublessee that GKDA deems undesirable or to expend any funds in connection with reletting or collection of rents therefrom. Tenant will not be entitled to credit for or reimbursement of any proceeds of reletting in excess of the rental owed under this Sublease for the period of reletting. GKDA may re-let the whole or any portion of the Premises, for any period, to any sublessee and for any use or purpose allowed by the Master Lease.

26.9 GKDA's Default. If GKDA fails to perform any of its obligations under this Sublease Tenant's exclusive remedy will be an action for damages, but only after Tenant has given GKDA 30 days written notice and unless and until GKDA fails to cure the default, Tenant will not have any remedy or cause of action by reason thereof. All obligations of GKDA under this Sublease will be construed as covenants, not conditions; and all such obligations will be binding upon GKDA only during the period of its possession of the Premises and not thereafter. The term "GKDA" will mean only the party identified in Paragraph 1 and only until GKDA

transfers its interest in the Premises, after which GKDA will be released and discharged from all covenants and obligations of GKDA thereafter accruing. Notwithstanding any other provision of this Sublease, GKDA will not have any personal liability under this Sublease and Tenant agrees to look solely to the equity or interest, if any, then owned by GKDA in the Premises or the Building(s). In no event will any deficiency judgment or any money judgment of any kind be sought or obtained against GKDA, its directors, employees or agents.

**26.10 Tenant's Personal Property.** If GKDA repossesses the Premises, or if Tenant vacates or abandons all or any part of the Premises for more than 6 months, then Tenant will remove its personal property from the Premises and if Tenant does not remove its personal property within 30 days of GKDA's demand then, in addition to GKDA's rights under this Section 26, GKDA has the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, at all times prior to repossession by any lessor thereof or third party having a lien thereon. GKDA may dispose of the stored property if Tenant does not claim the property within 10 days after the date the property is stored. GKDA will give Tenant at least 10 days prior written notice of the intended disposition. GKDA will also have the right to relinquish possession of all or any portion of Tenant's furniture, fixtures, equipment and other property to any person ("Claimant") who presents to GKDA a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of Tenant's furniture, fixtures, equipment or other property, without the necessity on the part of GKDA to inquire into the authenticity or legality of said instrument. The rights of GKDA stated in this Paragraph 26.10 are in addition to any and all other rights that GKDA has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted GKDA under this paragraph are commercially reasonable.

**27. MORTGAGES.** Tenant may not encumber its subleasehold interest whether by mortgage or otherwise without obtaining GKDA's prior written consent. Tenant agrees that this Sublease will be subordinate to any ground lease or underlying lease, first-lien mortgage or deed of trust or other first or second lien covering the Premises, upon and subject to the following terms and conditions. Tenant's subordination is conditioned on execution and delivery to Tenant by each lessor under a ground lease or underlying lease (including specifically the Government), each mortgagee, lien holder and beneficiary of a first- or second-lien deed of trust by whom subordination is requested, of a nondisturbance agreement reasonably acceptable to Tenant. With respect to any lessor, mortgagee, etc., whose interest is in existence prior to the beginning of the Term, GKDA agrees to obtain a nondisturbance agreement(s) within 30 days of the execution of this Sublease. The nondisturbance agreement will be in recordable form and will recognize Tenant's rights under this Sublease in the event GKDA's interest is terminated while this Sublease is in effect. The nondisturbance agreement will include a provision to the effect that in the event of a termination of the ground or underlying lease or foreclosure of the mortgage, deed of trust or other lien in favor of the secured party, or upon a sale of the property encumbered thereby pursuant to the trustee's power of sale, or upon a transfer of the Premises by deed in lieu of foreclosure, then for so long as Tenant is not in material default under the terms, covenants and conditions of this Sublease, this Sublease will continue in full force and effect as a direct lease between the owner or succeeding owner of the Premises, as landlord, and Tenant for the balance of the Term, upon and subject to all of the terms, covenants and conditions of this Sublease. The nondisturbance agreement will not in any event include any terms that are inconsistent with the terms of this Sublease or that adversely affect Tenant's rights, or increase Tenant's obligations, under this Sublease. Tenant will not pursue any remedy available to Tenant under this Sublease for any default on the part of GKDA without first giving written notice by

certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any mortgage or deed of trust, the name and post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording the mortgagee, trustee or holder a reasonable opportunity (not less than 30 days) to make performance, at its election, for and on behalf of GKDA.

**28. MECHANIC'S LIENS.** The Premises are publicly owned property and are not subject to mechanic's and materialmen's liens under Texas law. Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of GKDA or Tenant in the Premises. **Tenant will indemnify, save and hold the Government, the City, and GKDA, together with their respective agents, elected officials, employees, officers and representatives, individually and collectively, harmless from any and all loss, cost or expense, including without limitation attorney's fees, based on or arising out of asserted claims or liens created or caused by Tenant against the leasehold estate or against the right, title and interest of GKDA in the Premises or under the terms of this Sublease.**

**29. MISCELLANEOUS.**

29.1 Consent by GKDA. Whenever in this Sublease, GKDA's or Tenant's consent, permission or approval is required and has been properly requested, such consent, permission or approval will not be unreasonably withheld, delayed or conditioned, and if GKDA or Tenant does not respond within 30 days to the request of the other for consent, permission or approval, then GKDA's or Tenant's consent, permission or approval will be deemed to be given as of the 31st day.

29.2. Interpretation. The captions inserted in this Sublease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Sublease, or any provision hereof, or in any way affect the interpretation of this Sublease.

29.3 Binding Effect. Except as otherwise expressly provided in this Sublease, the terms, provisions and covenants and conditions in this Sublease apply to, inure to the benefit of and are binding upon the parties hereto and upon their respective successors and assigns. GKDA has the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Buildings and other property that are the subject of this Sublease.

29.4 Evidence of Authority. Each party agrees to provide to the other, promptly upon demand, a corporate resolution, proof of due authorization by partners or other appropriate documentation evidencing the due authorization of each party to enter into this Sublease.

29.5 Force Majeure. Neither the Government, the City, GKDA, nor Tenant, together with their respective agents, elected officials, employees, officers and representatives, individually and collectively, will be held responsible for delays in the performance of its obligations under this Sublease (except for Base Rental and Additional Rent and other payments owed by Tenant to GKDA) when caused by material shortages, acts of God, labor disputes or other events beyond the control of GKDA or Tenant, as the case may be.

29.6 Payments Constitute Rent. Notwithstanding anything in this Sublease to the contrary, all amounts payable by Tenant to or on behalf of GKDA under this Sublease, whether or not expressly denominated as rent, will constitute rent.

29.7 Estoppel Certificates. Tenant agrees, from time to time, within 10 days after written request of GKDA, to deliver to GKDA, or its designee, an estoppel certificate stating that this Sublease is in full force and effect, the date to which rent has been paid, the unexpired term of this Sublease, any defaults existing under this Sublease (or the absence thereof) and any other factual or legal matters pertaining to this Sublease as may be requested by GKDA. It is understood and agreed that Tenant's obligations to furnish estoppel certificates in a timely fashion is a material inducement for GKDA's execution of this Sublease.

29.8 Entire Agreement. This Sublease constitutes the entire understanding and agreement of GKDA and Tenant with respect to the subject matter of this Sublease, and contains all of the covenants and agreements of GKDA and Tenant with respect thereto. GKDA and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by GKDA or Tenant, or anyone acting on behalf of GKDA or Tenant, which are not contained in this Sublease, and any prior agreements, promises, negotiations or representations not expressly set forth in this Sublease are of no force or effect. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBLEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. THE PREMISES ARE HEREBY PROVIDED TO TENANT AND TENANT HEREBY ACCEPTS THE PREMISES AS-IS, WHERE-IS. GKDA's agents and employees do not and will not have authority to make oral exceptions, changes, or amendments to this Sublease, or factual representations not expressly contained in this Sublease. Under no circumstances will GKDA or Tenant be considered an agent of the other. This Sublease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto. The foregoing warranty waiver provisions are not intended to relieve the Government from any liability for any environmental contamination released by the Government, nor to require Tenant to be responsible for clean-up, remediation, or third party liability resulting from environmental contamination, except to the extent released or aggravated by Tenant.

29.9 Survival of Obligations. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Sublease will survive the expiration or earlier termination of the Term hereof, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises. Upon the expiration or earlier termination of the Term hereof, and prior to Tenant vacating the Premises, Tenant will pay to GKDA any amount reasonably estimated by GKDA as necessary to put the Premises in good condition and repair, reasonable wear and tear excluded, including without limitation the cost of repairs to and replacements of all heating and air conditioning systems and equipment therein. Tenant will also, prior to vacating the Premises, pay to GKDA the amount, as estimated by GKDA, of Tenant's obligation hereunder for taxes and insurance premiums for the year in which this Sublease expires or terminates. These amounts will be used by GKDA for payment of Tenant's obligations, with Tenant being liable for any additional costs therefore upon demand by GKDA, or with any excess to be promptly returned to Tenant after all of Tenant's obligations have been determined and satisfied, as the case may be.

29.10 Severability of Terms. If any clause or provision of this Sublease is illegal, invalid or unenforceable under present or future laws effective during the Term, then, in such event, it is the intention of the parties hereto that the remainder of this Sublease will not be affected thereby, and it is also the intention of the parties to this Sublease that in lieu of each clause or provision of this Sublease that is determined to be illegal, invalid or unenforceable,

there be added, as a part of this Sublease, a clause or provision as similar in terms to the illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

29.11 Effective Date. All references in this Sublease to "the date hereof" or similar references refer to the last date on which all of the parties have executed this Sublease.

29.12 Broker's Commission. Tenant represents and warrants that it has dealt with and will deal with no broker, agent or other person in connection with this Sublease or extensions or amendments to this Sublease, and that no other broker, agent or other person brought about this transaction, and **Tenant agrees to indemnify and hold the Government, the City, and GKDA, together with their respective agents, elected officials, employees, officers and representatives, individually and collectively, harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.** GKDA will use the services of TCCT Real Estate, Inc. ("TCCT") as its broker, but in no event will Tenant have any liability to TCCT or any other broker engaged by GKDA **and GKDA will indemnify Tenant, to the extent allowed by Texas law, against the claims of any broker or agent claiming to represent GKDA.**

29.13 Ambiguity. GKDA and Tenant hereby agree and acknowledge that this Sublease has been fully reviewed and negotiated by GKDA and Tenant and their respective legal counsel and, accordingly, in the event of any ambiguity in this Sublease, Tenant waives the rule of construction that the ambiguity will be resolved against the party who prepared this Sublease.

29.14 Joint and Several Liability. If there is more than one Tenant, the obligations in this Sublease imposed upon Tenant will be joint and several. If there is a guarantor of Tenant's obligations, the obligations in this Sublease imposed upon Tenant will be joint and several obligations of Tenant and the guarantor, and GKDA need not first proceed against Tenant before proceeding against the guarantor, nor will the guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give the guarantor any notices under this Sublease.

29.15 Third Party Rights. Nothing herein expressed or implied is intended, nor will be construed, to confer upon or give to any person or entity, other than GKDA, Tenant, the Government and the City, together with their respective agents, elected officials, employees, officers and representatives, individually and collectively, any right or remedy under or by reason of this Sublease.

29.16 Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Sublease, are incorporated into this Sublease and made a part hereof for all intents and purposes as if fully set out in this Sublease. All capitalized terms used in such documents will, unless otherwise defined therein, have the same meanings as are set forth in this Sublease.

29.17 Applicable Law/Venue. This Sublease has been executed in San Antonio, Texas, and will be governed in all respects by the laws of the State of Texas. **Venue for any action brought under this Sublease will be in Bexar County, Texas, and nowhere else.** It is the intent of GKDA and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between GKDA and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever will the amount contracted for, charged or received by GKDA for the use, forbearance or retention of

money hereunder or otherwise exceed the maximum amount which GKDA is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof would result in exceeding the legal maximum, then the obligation to be fulfilled will be automatically reduced to the legal maximum and, if from any circumstance, GKDA ever receives as interest or otherwise an amount in excess of the legal maximum, then that amount that would be excessive interest will be applied to the reduction of rent under this Sublease and, if that amount that would be excessive interest exceeds the rent due, then that additional amount will be refunded to Tenant.

29.18 Time of Essence. Time is of the essence with respect to all of the rights and obligations of Tenant hereunder including, without limitation, Tenant's option rights contained in Paragraph 6.1 hereof if any.

29.19 Recording. At the request of either party, the parties will execute in recordable form a memorandum of this Sublease for the purpose of giving notice to third parties of the existence of this Sublease, the identity of the Premises, and the length of the Term and Extended Term. Either party may record a memorandum (but not the whole Sublease) for the purpose of giving such notice.

29.20 Payment on Demand. Whenever used in this Sublease, the phrase "payment on demand" means within 15 days of receipt of a bona fide and reasonably documented invoice.

29.21 Days. Whenever used in this Sublease, the term "days" means calendar days.

29.22 Protective Covenants. In the event that GKDA records declarations of covenants, conditions and restrictions ("CC&Rs") for KellyUSA, Tenant agrees that this Sublease will be both subject and subordinate to all of the terms and conditions of such CC&Rs.

### **30. NOTICES.**

30.1 Procedure for Notices. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by GKDA to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to GKDA will be deemed to be complied with when and if the following steps are taken:

(A) All rent and other payments required to be made by Tenant to GKDA under this Sublease will be payable to GKDA at the address for GKDA set forth below or at any other address as GKDA may specify from time to time by written notice delivered in accordance with this Section 30. Tenant's obligation to pay rent and any other amounts to GKDA under the terms of this Sublease will not be deemed satisfied until the rent and other amounts have been actually received (as opposed to deemed received as under Paragraph 30.1.C below) by GKDA.

(B) All payments required to be made by GKDA to Tenant under this Sublease will be payable to Tenant at the address set forth below, or at any other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance with this Section 30.

(C) Except as expressly provided elsewhere in this Sublease, any written notice, document or payment required or permitted to be delivered under this Sublease will be

deemed to be delivered when received or, whether actually received or not, when deposited with Federal Express or in the United States Mail, postage prepaid, Certified or Registered Mail, addressed as follows:

If to GKDA: Greater Kelly Development Authority  
143 Billy Mitchell Blvd., Suite 6  
San Antonio, Texas 78226-1816  
Attention: Executive Director

If to the City: The City of San Antonio  
Post Office Box 839966  
San Antonio, Texas 78283-9966  
Attention: City Manager

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Government: United States of America  
c/o AFBCA  
1700 N. Moore St., Suite 2300  
Arlington, Virginia 22209  
Attention: Special Assistant/Real Estate  
And Personal Property

**31. RECORDS RETAINAGE.** The Comptroller General of the United States, the Auditor General of the United States or the Auditor General of the United States Air Force or any of their duly authorized representatives will, until 3 years after the expiration or earlier termination of the Master Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of Tenant involving transactions related to this Sublease, which Tenant will preserve.

**32. PERSONAL PROPERTY LEASE/CROSS-DEFAULT.** Tenant and GKDA have entered into a Personal Property Lease of even date herewith, which is incorporated herein by reference for all purposes. If Tenant is in default of this Sublease GKDA may, at its option, declare a default in the Personal Property Lease.

**33. GOVERNMENT'S USE RESTRICTIONS.** The Premises are leased by the Government to GKDA pursuant to the Master Lease as stated in Paragraph 1.2. Tenant acknowledges receipt of a copy of the Master Lease, as amended from time to time, and will operate its business on the Premises in compliance with all of the use restrictions set out in it, including, but not limited to, allowing the Government access to the Premises as set out in the Master Lease.



EXECUTED BY GKDA on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**GREATER KELLY DEVELOPMENT  
AUTHORITY:**

By: \_\_\_\_\_  
Bruce E. Miller, Executive Director

A T T E S T:

\_\_\_\_\_

EXECUTED BY TENANT on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A T T E S T:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

### ESTIMATE OF ANNUAL OPERATING COSTS

#### Calgary Units

Number of Units: 12  
Area of Buildings 20,004 SF

#### Estimated Annual Operating Costs for Calgary Units (ROH to pay)

(Actual costs per ROH will vary depending upon operation's concept)

Utilities	\$.75/SF	\$15,003	
Repairs and Maintenance	\$.45/SF	\$ 9,002	
Monthly Services (Refuse, etc)	\$.10/SF	\$ 2,000	
Miscellaneous	\$.20/SF	<u>\$ 4,000</u>	\$30,005

#### Estimated Annual Payments to GKDA

Base Rent (Structural Reserve & Asset Management Fee)		\$ 6,845	
CAM	\$.30/SF	\$ 6,001	
Infrastructure Maintenance	\$.20/SF	\$ 4,001	
Insurance	\$.25/SF	\$ 5,001	
Amort of Upgrades (See Note)		<u>\$11,542</u>	<u>\$33,390</u>

**Note:** The GKDA estimates that it will be necessary to make approximately \$50,000 in improvements to obtain a certificate of occupancy. The costs of these upgrades will be amortized over the 5-year lease period. If the necessary improvements can be completed for less, the payment will be adjusted.

## **EXHIBIT C**

### **PROPERTY MANAGEMENT SERVICES**

#### **Employee Training and Certification**

All employees including contractors involved in operations requiring certification and/or licenses (e.g. Case Workers, Counselors, etc.) will possess current and valid certificates from the appropriate State, or other authority, as may be required by law or regulation. The ROH will provide for the maintenance of all employee-training records and for the inspection of contractor records as deemed necessary.

#### **Quality Control**

The ROH will provide a Quality Control Program (QCP) to assure all requirements of the contract are accomplished. As a minimum, the program will consist of a written Instructions and Procedures Manual and a Quality Control Plan. The QCP will establish procedures to assure that records reflecting evidence of existing or past quality of service are maintained.

#### **Written Instructions And Procedures Manual**

The Instructions and Procedures Manual will describe how the ROH will accomplish all property management tasks to be accomplished. It will include, but not be limited to, detailed descriptions of the work to be performed

#### **Inspection System**

The inspection system will include, as a minimum, an inspection plan for all scheduled maintenance, pest control, utility operations, and other functions provided by the ROH.

#### **Physical Security**

The ROH will implement a system to control and manage access to each apartment and the facility. A key control procedure will be included in the Quality Control Program.

#### **Hours of Operation**

The ROH will establish normal duty hours for operations, and procedures pertaining to accomplishing unscheduled emergency or urgent activities outside the normal duty hours.

#### **Warranty and Defects**

The ROH will provide notification to the City's contracting officer or designee within two workdays of discovery of real or suspected defects in City-owned equipment or systems under warranty.

#### **Utilities**

The ROH will be responsible for all utilities used in the performance of this agreement. COSA will not be billed for utilities used in the performance of this contract.

#### **Safety**

The ROH will comply with fire and safety standards for all activities related to the accomplishment of the contract.

**Transition (Start-Up) Plan**

The ROH will prepare a Start-Up Plan in preparation of assuming full responsibility for all operations and costs on date a contract between COSA and the ROH is implemented.

**Initial Operations & Maintenance (O&M) Orientation**

GKDA will provide a one time O&M orientation to the ROH, at a date and time agreed to by both parties, but not later than 30 days following contract implementation.

**Administrative Support**

The ROH will provide its own administrative support, including personnel, equipment, and materials.

**Temporary Repair Work**

The ROH will provide notification to the tenant, in writing, by 4:00pm daily, of any temporary repair work or major system failure. The notification will explain the reason for the temporary repair (i.e., material not available) and the estimated date for permanent repair. When urgent or emergency service call work is in progress, and completion prior to end of normal duty day is impossible, it will be the responsibility of the ROH to provide the continuation of work to a point of safe utilization, regardless of the time required.

**Service Calls**

The ROH will provide a central service call phone number to receive job order requests from tenants 24 hours per day, 7 days per week.

**Grounds Maintenance**

The ROH will provide maintenance of grounds and landscaping around all facilities and apartment grounds. The work includes grass mowing, edging, and trimming, turf repair, tree, shrub, and hedge maintenance, fertilizing, vegetation control and debris removal.

**Grass Mowing**

Grass mowing and trimming will be accomplished in accordance with mowing standard and frequency as shown in the Frequency Standards, below. Precautions will be taken to prevent scalping, uneven mowing, rutting by equipment, and damage to trees, shrubs, buildings, and service utilities. Within seven (7) working days, the ROH will repair, or replace, turf, trees, or shrubs that have been damaged by mowing operations. Other damage will be repaired within a time period agreed to between the ROH and the City's contract administrator, but not to exceed 30 days.

**Tree, Shrub, and Hedge Maintenance**

Trees and shrubs will be pruned and trimmed only for lifting, removal, and/or cutback of branches that conflict with normal traffic or safety in the vicinity of the trees, or intrude on prescribed clearances from utility lines. Shrubs, hedges and trees will be trimmed to maintain their natural growth characteristics as shown in the Frequency Standards below.

**Herbicide and Soil Sterilant Application**

The ROH will provide application of a commercial type soil sterilant, according to manufacturer's instructions to destroy all vegetation appearing in pavement cracks on driveways, parking lots, and walks. No soil sterilants will be applied in areas where trees and shrubs may be killed. In these areas a contact herbicide, like glyphosphate, will be used.

### Frequency Standards

The table below delineates frequency standards for grounds maintenance tasks.

TASK NO.	TASK	STANDARD FREQUENCY
1	Mow Grounds	Maintain 2''-4'' Height
4	Apply Weed Control - Enhanced/Improved Grounds	2 Times per Year
5	Edge Grass-Enhanced/Improved Grounds	Every Other Mowing
7	Police Grounds	2 Times per Week
8	Remove Leaves- Enhanced/Improved Grounds	6 Times per Year
9	Prune Shrubs/Hedges- Enhanced/Improved Grounds	1 Time per Year
10	Prune/Remove Dead Trees	2 Times per Year or as needed for safety hazard
12	Maintain Flower Beds- Enhanced/Improved Grounds	1 Time per Month
14	Fertilize/Renovate Lawns	3 Times per Year for Enhanced/Improved Grounds
15	Maintain Surface Drainage Ditches	2 Times per Year
16	Maintain Irrigation Systems- Enhanced/Improved Grounds	As Needed

### Buildings and Facilities Maintenance and Repair

The ROH will ensure that the apartments are maintained in good order.

#### The ROH will:

1. Inspect facilities to determine condition deficiencies as required
2. Establish dates for initiation and termination of leases. Initiate and terminate services such as utilities, custodial, etc
3. Provide maintenance and minor repair necessary to maintain safety of the tenants' apartments.
4. Ensure restoration or repair of water, gas, and electrical service.
5. Provide response to service calls.
6. Provide preventative maintenance i.e.; replace A/C filters, annual heating/cooling systems checks.
7. Provide relamping of interior and exterior common area light fixtures.
8. Provide maintenance and repair that enhances the aesthetics of the facility. Examples include interior painting, carpet replacement.

### Locksmith services

The ROH will open and/or rekey doors as necessary, as well as replace lost or stolen keys.

### Custodial Services

The ROH will provide custodial services to common areas as specified but not limited to those listed below in accordance with commercial best practices:

Trash pickup  
Clean refuse containers  
Clean garbage containers  
Paint dumpsters

### **Fire Suppression and Detection Systems**

The ROH will provide monitoring, inspections, scheduled maintenance and repairs of the entire system.

### **Pest Control and Chemical Application**

The ROH will provide control of all pests, which can degrade the structural integrity of the facility (including facility boundary fences) or pose physical harm to personnel inside facilities. This includes, but is not limited to; termites, ground squirrels, birds, wasps, roaches, fire ants, snakes and mice. An annual survey will be conducted of all facilities at risk to damage by these pests.

### **Grounds Chemical Applications**

Applications of herbicides, fungicides and insecticides will be accomplished in accordance with Federal, State, and Local regulations. Personnel performing this service will meet all appropriate licensing requirements. Acquisition of required permits are the ROH's responsibility.

### **Hazardous Waste Management and Spill Plans**

The ROH will develop hazardous waste management and spill plans required by Federal, State, and Local environmental laws.

### **Parking Lot and Pavement Maintenance**

The ROH will provide maintenance of the facilities parking lots and pavements in a driveable condition. Maintenance will include filling potholes, applying herbicide to or removing vegetation in joints or cracks, and repairing pavement failures, striping to include center, edge, crosswalk markings and parking lot markings.

### **Structural Maintenance**

#### **Exterior**

Walls and Grouting Damaged or deteriorated wall areas and grouting will be restored to a serviceable and weather-tight condition. Repairs will match the undamaged portion of the walls in material, color, size, and texture. Included in this area are damaged joints in exterior walls, which will be caulked with a compound to provide a weather-tight seal.

Trim Damaged or deteriorated trim including bird screens will be replaced with new material of a design to match existing trim.

Hose Bibbs Check for leaking faucets, broken handles and other defects. Check slabs in the vicinity of hose bibbs for evidence of leakage inside the wall. Repair or replace as required.

Louvers Damaged or deteriorated louvers will be replaced with new material matching the original color.

Roof Repair & Accessories The ROH will provide for inspection of roofs for deterioration and damages that may compromise the water-tight integrity of the roof. The ROH will provide for maintenance of roofs to preserve a weather-tight seal. Inspection will include investigation of leaks, general condition of the membrane, deck and roofing structural members, and all items that penetrate the membrane whether from above or below. Multiple repairs to a facility roof although not expected, may be required.

Roof Flashing Flashing will be repaired to form an effective water seal. Repairs will be made to prevent corrosion and erosion.

Roof Drains/Gutters Roof drain/gutter systems will be maintained in a condition to carry water away from the building to building drain sumps. Damaged or deteriorated roof drains, gutters and piping will be replaced with material matching the existing material. The ROH will provide for removal of debris from around and in roof drains/gutters and clean metal drain screen/covers.

Painting Painting will be required to prevent corrosion, wood deterioration and insure proper building appearance. Multiple painting requirements, during the Agreement period, for individual facilities are not anticipated but may be necessary.

Signage The ROH will provide for the maintenance and repair/replacement of all exterior signs.

Fencing The ROH will provide for the maintenance and repair of all fencing (chain link, barbed wire, wood, etc.). Repairs will be with materials similar to the original.

Stairs and Handrail Components Stairs and handrail components will be maintained in a safe and structurally sound condition.

## **Interior**

Walls and Ceilings Damaged and deteriorated walls, wallpaper, ceilings, and related trim will be repaired or replaced to provide a safe, attractive interior, free of defects. Insulation and sound attenuation material removed will be replaced. If it is damaged in removal, new materials will be used.

Floors Damaged or deteriorated flooring will be repaired or replaced to provide a uniform, aesthetic surface. The ROH will provide for the inspection of exposed portions of the substructure during repair or replacement activity. Any structural damage or deterioration will be repaired. Multiple occurrences, at any one facility, are not anticipated but may occur.

Painting Interior painting includes complete prepainting preparation and finish painting of all surfaces. All paint colors will match the existing, as close as practicable.

Mold and/or Mildew Deterioration The ROH will provide the identification of and directions for correction of any facilities that exhibit the start of mold and/or mildew in the interior surfaces of the facilities.

Stairs and Handrail Components Stairs and handrail components will be maintained in a safe and structurally sound condition.

## **Interior And Exterior**

Walls Consists of patching and/or replacing broken or cracked wall surfacing material, including ceramic tile and other surface units, and installing base and shoe molding where required to provide a safe, attractive, interior and exterior surface, free of defects.

Windows Removing and replacing deteriorated window trim, stool, apron, and sill. Replacement of broken or cracked glass, damaged screens, repairs of mechanical operating, locking and stop devices, caulking and weather stripping as required.

Doors Repair and/or replacement of broken or damaged doors, including locksets, hardware, and door smoke seals. Automatic door operators will be repaired and/or replaced, as necessary, to maintain original design functions.

Folding doors and Partitions Repair of folding doors and partitions, including tracks and hardware, will be accomplished using materials similar to original items.

Rolling Steel Doors and Grills Repair and/or replace damaged door and grill components using matching materials to provide the required security in those areas using these systems.

Ceilings Patching and/or replacing broken or cracked ceiling surface materials to provide a safe, attractive interior, free of defects. Replace damaged grossly damaged ceiling tiles using matching materials.

## **Electrical Maintenance**

ROH will ensure all electrical maintenance is maintained in accordance with the National Electric Code (NEC) and all Local codes and ordinances. Electrical maintenance will include, but is not limited to, the following:

### **Fixtures**

Maintain all lights, receptacles, all types of switches, switch boxes, etc. Includes exterior fixtures on the building, parking lot lighting, roadway lighting, standards and bollards, tennis courts lighting, ballfield lighting, etc., including bulb and ballast replacement as necessary.

### **Interior and Exterior Wiring**

Maintain all electrical wiring to facility equipment, fixtures, and components. Includes wiring to parking lot lights and security lighting.

### **Equipment**

Maintain equipment including but not limited to motor starters, switch gear, fused switches, electrical motors, heaters, motor control centers, elements, controls, magnetic switches, safety switches, circuit breakers, distribution panels, alarm systems (fire).

## **Plumbing**

Maintain all water, natural gas, and sanitary sewer systems in all facilities/building. Replace malfunctioning parts, and/or entire unit when necessary to provide a safe reliable system. Plumbing maintenance will include, but is not limited to, the following:

### **Equipment**

Maintain the hot water tanks and component parts (i.e. controls, gauges, traps, softeners, heat exchangers, converters, valves, etc.), water pumps, hot water heaters, drinking fountains, and related piping. Repair leaks, malfunctioning parts and/or entire unit when necessary to provide safe and reliable service.

### **Fixtures**

Commodes/Urinals Repair or replace when existing unit is beyond economical repair. Repair or replace flushometer, stops, toilet seats, etc.

Showers Repair fiberglass units when required. Replace component parts such as shower heads, washers, mixing valves, drain covers, curtain rods, fold down seats. Repair tile showers to include above components.

Sinks and Lavatories Replace sinks and/or lavatories when damaged beyond repair. Repair and/or replace valve inserts or washers, faucets, handles for faucets, drain traps, gaskets, pop-up drains, etc. when required.